Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
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82-905

No. _____

In the Supreme Court of the United States

OCTOBER TERM, 1982

SOONER FEDERAL SAVINGS AND LOAN ASSOCIATION, KAY COUNTY FEDERAL SAVINGS AND LOAN ASSOCIATION, and FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF LAWTON
Appellants

v.

OKLAHOMA TAX COMMISSION, and THE STATE OF OKLAHOMA
Appellees

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

JURISDICTIONAL STATEMENT

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PRELIMINARY MATTER

QUESTIONS PRESENTED

1. Did the Supreme Court of Oklahoma err in determining that 12 U.S.C. §1433 does not deprive the State of Oklahoma of the right to tax dividends disbursed by the Federal Home Loan Bank, pursuant to 12 U.S.C. §1421, *et seq.*, to its stockholders', Appellants herein, as income under the provisions of the Oklahoma Income Tax Code?

2. Does 31 U.S.C. §§742 and 742a. provide an exemption from state taxation for dividends paid to stockholders from the net earnings of the Federal Home Loan Bank accruing as a result of the Bank's profitable operations?

DESIGNATION OF CORPORATE RELATIONSHIPS

Sooner Federal Savings and Loan Association, Kay County Federal Savings and Loan Association, and First Federal Savings and Loan Association of Lawton, filing this Jurisdictional Statement as Appellants in this proceeding state that:

Kay County Federal Savings and Loan Association, a Charter K (Revised) association, was merged into Sooner Federal Savings and Loan Association, a Charter K (Revised) association, on March 1, 1974. First Federal Savings and Loan Association, a Charter N association, was merged into Sooner Federal Savings and Loan Association on January 1, 1976. This relationship has remained to the present time.

Sooner Federal Savings and Loan Association existed as a Charter K (Revised) association until December 16, 1981. On that date Sooner Federal Savings and Loan Association became a federal Charter S stock association. It has existed in this form to the present date.

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No. _____

In the Supreme Court of the United States

OCTOBER TERM, 1982

SOONER FEDERAL SAVINGS AND LOAN ASSOCIATION, KAY COUNTY FEDERAL SAVINGS AND LOAN ASSOCIATION, and FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF LAWTON

Appellants

v.

OKLAHOMA TAX COMMISSION, and THE STATE OF OKLAHOMA

Appellees

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the Oklahoma Supreme Court entered October 5, 1982, and the Order of the Oklahoma Tax Commission, dated December 4, 1979, are set out in Appendix A and B, respectively, hereto. The decision of the Supreme Court of Oklahoma is reported as *Sooner Federal Savings and Loan Association, et al. v. Oklahoma Tax Commission and the State of Oklahoma,* _____P.2d_____, No. 54,607 (Okla. 1982).

JURISDICTION

This action for relief from state taxation draws into question the validity of Title 68 Oklahoma Statutes (Supp. 1974) §2353, *et seq.*, insofar as those sections attempt to tax dividends received by Appellants from the Federal Home Loan Bank. It is Appellants' position that those sections of the Oklahoma statutes which purport to tax such dividends are repugnant to 12 U.S.C. §1433, a duly enacted law of the United States, which specifically exempts "capital," "reserves," "surplus," "advances" and *"income"* of a Federal Home Loan Bank from state taxation. In the alternative, Appellants submit that these same sections of the Oklahoma statutes are repugnant to 31 U.S.C. §742 and 742a., duly enacted laws of the United States, which clearly exempt from all but federal taxation the *"stock"* and *"dividends"* of federal instrumentalities such as the Federal Home Loan Bank.

The federal question relating to 12 U.S.C. §1433 was timely raised by Appellants in their initial claims for refund to the Oklahoma Tax Commission and has been continuously raised on appeal. The federal question relating to 31 U.S.C. §§742 and 742a. was initially raised by Appellee in its Answer Brief filed with the Supreme Court of Oklahoma on August 20, 1980, and has been a part of the record since that time.

On December 4, 1979, the Oklahoma Tax Commission (Order No. 79-12-04-06) held against Appellants ruling that Title 68 Oklahoma Statutes (Supp. 1974) §2358 A.2., was not applicable to the income received by Appellants in this situation. This section generally provides for a deduction from Oklahoma taxable income of any item of income that the State is prohibited from taxing under the federal or state constitutions, or other federal or state laws. On October 5, 1982, the Supreme Court of Oklahoma affirmed; all Justices agreeing that

the Order of the Oklahoma Tax Commission taxing Appellants' dividend income received on the basis of their stock ownership in the Federal Home Loan Bank was authorized and proper in its application.

A Motion to Stay Mandate of the Supreme Court of Oklahoma was filed by Appellants on October 14, 1982. The Motion to Stay Mandate was granted by the Supreme Court of Oklahoma on the 25th day of October, 1982. Both the Motion to Stay Mandate and the Order of the Supreme Court of Oklahoma are set out in Appendix C and D, respectively. Notice of Appeal to this Court was timely filed on October 14, 1982. Said Notice of Appeal is reproduced in full at Appendix E hereto.

The jurisdiction of the United States Supreme Court to review this decision of the Supreme Court of Oklahoma on appeal is conferred by 28 U.S.C. §1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *Hammond v. Whittredge,* 204 U.S. 538, 51 L.Ed. 606 (1907); *Green Bay & Mississippi Canal Company v. Patten Paper Company,* 172 U.S. 58, 43 L.Ed. 364 (1898).

It should also be noted that a Motion for Rehearing of this matter was not filed by Appellants with the Supreme Court of Oklahoma. Such a request is not necessary to a finding that a decision is final under the provisions of 28 U.S.C. §1257. [See *Southern R. Co. v. Clift,* 260 U.S. 316, 67 L.Ed. 283 (1922); and *Market S.R. Co. v. Railroad Comm. of California,* 324 U.S. 548, 89 L.Ed. 1171 (1945), *reh. denied.* 324 U.S. 890, 89 L.Ed. 1438 (1945)].

STATUTORY PROVISIONS

Title 68 Oklahoma Statutes (Supp. 1974) §2353, 10., 11., 12., 13. is set out in full in Appendix G hereto. In pertinent part, the statute provides:

> " . . . 10. 'Taxable income' with respect to any taxpayer means the 'taxable income' . . . as defined in the Internal Revenue Code as [it] applies to such taxpayer or any income of such taxpayer; . . .
>
> * * *
>
> . . . 12. 'Oklahoma taxable income' means 'taxable income' as reported . . . to the federal government . . .
>
> * * *
>
> . . . 13. 'Oklahoma adjusted gross income' means 'adjusted gross income' as reported to the federal government."

Under Federal law, 12 U.S.C. §1433 specifies in relevant part:

> "Any and all notes, debentures, bonds, and other such obligations issued by any bank, and consolidated Federal Home Loan Bank bonds and debentures, shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any state, county, municipality, or local taxing authority. The bank,including its franchise, its capital, reserves, and surplus, its advances, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any state, county, municipality or local taxing authority, . . . "

This statute is more fully set out in Appendix H, hereto.

In addition, 31 U.S.C. §§742 and 742a. provide in pertinent part:

"§742 Exemption from Taxation
All stocks, bonds, treasury notes and other obligations of the United States, shall be exempt from taxation . . . "

* * *

"§742a. Application of Other Law
(a) *Exemption from taxation under Internal Revenue Code; exceptions.*
Interest upon obligations and dividends . . . from shares . . . of stock . . . issued on or after the effective date of the Public Debt Act of 1942 . . . by the United States or any agency or instrumentality thereof shall not have any exemption . . . except as provided under the Internal Revenue Code of 1954. . . . "

These statutory sections are set out in full in Appendix I, hereto.

Title 68 Oklahoma Statutes (Sup. 1974) §2358A.2. and 12 U.S.C. §1464(h) are also set out in full at Appendix J and K, respectively.

STATEMENT OF THE CASE

Appellants are all Federal Savings and Loan Associations organized under the Home Owners' Loan Act of 1933, 48 Stat. 128, 12 U.S.C. §§1461-1468, and all are doing business within the State of Oklahoma under the present corporate name of Sooner Federal Savings and Loan Association. Additionally, Appellants are members of the Federal Home Loan Bank which was established under the authority of the Federal Home Loan Bank Act of 1932, 47 Stat. 725, 12 U.S.C. §§1421-1449.

The Federal Home Loan Bank is subject to regulation and supervision by the Federal Home Loan Bank Board, which is an independent agency within the Executive Branch of the Federal Government [12 U.S.C. §1437(b)].

Congress created Federal Home Loan Banks to furnish reserve banking facilities for savings and loan associations and similar banking institutions which loan mortgage money to home buyers. The Federal Home Loan Bank System, as created, is one element of a tripartite national credit system of federal instrumentalities made up of the Federal Reserve System, the Federal Farm Loan System and the Federal Home Loan Bank System. These systems respectively fulfill the function of supplying credit to the business community, farmers and homeowners throughout the country.

On July 22, 1932, the Federal Home Loan Banks began requiring each member institution to purchase a minimum number of shares of stock in the Bank. This ownership is not voluntary, but rather is a condition of membership in the Federal Home Loan Bank System. Section 2(4) of the Federal Home Loan Bank Act of 1932, *supra,* provides the statutory definition of a Federal Home Loan Bank member as an "institution which has subscribed" for Bank stock.

Section 6(c) of the Federal Home Loan Bank Act of 1932, *supra,* provides a formula for the amount of stock each member must own and maintain as long as it retains membership in the Federal Home Loan Bank. This amount, in turn, is directly related to the members' advances [§6(c)(2)(ii)] and under §10(c) of the Act, each Bank has a statutory lien on the stock issued to borrowing members as security for its advances.

Based on the Appellants' ownership of stock in the Federal Home Loan Bank, they received dividends for the years 1972, 1973 and 1974. After paying their 1972, 1973 and 1974 Oklahoma corporation income tax on the dividends received in the aggregate amount of $13,802.12, Appellants filed claims for refund for like amount on February 3, 1976 with the Income

Tax Division of the Oklahoma Tax Commission.[1] These claims were subsequently denied by the Oklahoma Tax Commission during May, 1976.

Following this action, Appellants protested the denial of their claims for refund to the Oklahoma Tax Commission. The protest was docketed and a hearing on the merits was set for February 23, 1979. The Hearing officer, on October 25, 1979, issued Findings and Recommendations which again denied Appellants' claims for refund.

Pursuant to such Findings and Recommendations, Order No. 79-12-04-06, dated December 4, 1979 was issued by the Oklahoma Tax Commission formally denying Appellants' claims for refund.

Appellants timely filed their Appeal (Petition in Error) with the Supreme Court of Oklahoma to review the Order of the Oklahoma Tax Commission on January 2, 1980. However, the Supreme Court of Oklahoma, on October 5, 1982, affirmed the judgment and Order of the Oklahoma Tax Commission providing for the taxation of dividends received by Appellants from the Federal Home Loan Bank.

In its opinion, the Supreme Court of Oklahoma recognized that 12 U.S.C. §1433 prohibits taxation of income of the Federal Home Loan Bank, but distinguished this case on the

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[1] The claims for refund were submitted in the following manner for each of Appellants:

Sooner Federal Savings & Loan Association		Kay County Federal Savings & Loan Association		First Federal Savings & Loan Association of Lawton	
1972	$2,547.20	1972	$137.89	1972	$ 64.28
1973	4,270.35	1973	96.96	1973	123.75
1974	6,182.19	1973	248.25	1974	319.25
Total	$12,802.74		$483.10		$319.28

basis that the statute does not prohibit taxation of the income of federally chartered savings and loan associations. The Court instead relied on 12 U.S.C. §1464(h) which permits the states to impose a tax upon the income of federally chartered savings and loan associations so long as the taxation does not discriminate against these particular associations. By applying the language of 12 U.S.C. §1464(h) to the Oklahoma income tax statutes, the Court found that the Appellants herein had not complained that either the Oklahoma tax was discriminatory or that their income was not subject to state taxing powers as are other Oklahoma financial institutions. Therefore, the court concluded that Appellants were not a federal instrumentality as described in 12 U.S.C. §1433, and affirmed the judgment of the Oklahoma Tax Commission.

THE FEDERAL QUESTION IS SUBSTANTIAL

State Taxation is Precluded Under 12 U.S.C. §1433.

During the years 1972, 1973 and 1974, Appellants received dividends based upon stock ownership in the Federal Home Loan Bank. Amounts received as dividends were timely reported as income on each of Appellants' 1972, 1973 and 1974 state income tax returns. Timely claims for refund were filed by Appellants with the Oklahoma Tax Commission to obtain refunds of taxes paid that were attributable to these dividends. The Oklahoma Tax Commission, as affirmed by the Supreme Court of Oklahoma, denied these claims for refund on the basis that 12 U.S.C. §1433 is inapplicable in this situation as Appellants are not an exempt "federal instrumentality" as contemplated by the statute. Furthermore, both tribunals concluded that State taxation is permissible in this instance so long as it does not discriminate against Appellants as specified in 12 U.S.C. §1464(h). (See Okla. Sup. Ct. opin. App. pp 7-A–10-A)

The Oklahoma statutes in question recognize that income is to be returned on the basis of taxable income and adjusted gross income as those terms are defined in the Internal Revenue Code. Moreover, the Oklahoma statutes clearly contemplate a deduction for amounts of income the State is prohibited from taxing by virtue of federal law. The federal law involved herein, 12 U.S.C. §1433, specifically provides an exemption from taxation for the Federal Home Loan Bank, including its franchise, capital, reserves, surplus, advances and its *income.* Appellants submit that this exemption is similar to those found in connection with the Federal Reserve Bank (Federal Reserve Act §7, 12 U.S.C. §531) and the Federal Land Bank (Federal Farm Loan Act §26, 12 U.S.C. §931; repealed by Act. Dec. 10, 1971, P.L. 92-181, Title V, §5.26, 85 Stat. 624; See NOW 12 U.S.C. §2055.). While the legislative history of 12 U.S.C. §1433 is not pertinent to this point, the broad scope which Congress intended to give a similar section, 12 U.S.C. §531 (Federal Reserve Bank) is enlightening in ascertaining the legislative impetus behind 12 U.S.C. §1433. The Congressional record reveals in connection with this statute:

> "Attention should also be given to the provision exempting Federal reserve banks and the stock held therein by member banks from *all classes of taxation* save such taxation as may be imposed upon the real estate held by these banks. In view of the increasing burden of taxation and of the Federal income-tax law, which now furnishes an additional draft upon net earnings, this exemption is likely to prove of material importance, since it amounts to an exemption of a corresponding proportion of the funds of member banks from the payment of taxes to which they would otherwise be subjected." (Emphasis Supplied).
> (See H. Rept. No. 69, 63rd Cong. 1st Sess. P.39)

In the same vein, the Federal Farm Loan Act exemption

from taxation [12 U.S.C. §931 (repealed)] has been given a broad scope in its interpretation. In *Federal Land Bank v. Bismark,* 314 U.S. 95, 86 L.Ed. 65 (1941), this Court held that 12 U.S.C. §931 (repealed) was broad enough to invalidate a sales tax imposed on building materials purchased by a Federal Land Bank. In its opinion, this Court determined that the term "including" appearing in the statute does not strictly limit the areas of exemption. Toward this end, this Court stated on page 100:

> " . . . the term 'including' is not one of all embracing definition, but connotes simply an illustrative application of the general principal . . . If the broad exemption accorded to every 'Federal Land Bank' were limited to the specific illustrations mentioned in the participial phrase introduced by 'including,' there would have been no necessity to exempt . . . the real estate held by the land banks."

In addition, an analogous situation to the circumstances presented herein is found in this Court's decision in *Laurens Federal Savings and Loan Association v. South Carolina Tax Commission,* 365 U.S. 517, 5 L.Ed. 2d 749, (1961). In the *Laurens* case, this Court invalidated a documentary stamp tax imposed upon promissory notes executed by a savings and loan association in the State of South Carolina. The opinion concluded that the tax constituted a prohibited tax on Federal Home Loan Bank advances, and, more importantly, it was of "no determining significance" that the association, rather than the lending bank, was responsible for remitting the tax. [See also *Pittman v. Home Owners Loan Corporation,* 308 U.S. 21, 84 L.Ed. 11 (1939).]

The conclusion in the *Laurens* and *Pittman* decisions is even more significant in light of the fact that neither the Oklahoma Tax Commission nor the Supreme Court of Oklahoma discussed or even cited these opinions, which had

been argued and cited in Appellant's briefs, in connection with arriving at their respective decisions. Furthermore, both decisions avoided any reference to an opinion, contained in the record, of the General Counsel of the Federal Home Loan Bank Board originally forwarded to Mr. Harry C. Erwin, CPA, concerning the American Savings and Loan Association which concluded that state taxation of dividends received from the Bank by a stockholder association is prescribed under 12 U.S.C. §1433. A copy of this opinion is set out in full at Appendix F.

In view of the legislative history and cases cited above, Appellants would argue that the dividends, which by statute (12 U.S.C. §1436) must be derived from the net income of the Bank, are not subject to taxation under the mandate of the Oklahoma income tax statutes. This conclusion is inescapable, regardless of the fact that the dividends are received by federally chartered savings and loan associations. The tax, in this instance, is being imposed on the net income of the Federal Home Loan Bank, which has merely been distributed to its stockholders.

In summary, the opinion of the Supreme Court of Oklahoma cannot be squared with the mandate of federal law and the earlier decisions of this Court. As a result, the opinion warrants a swift, summary reversal by this Court.

State Taxation Is Precluded Under 31 U.S.C. §§742 and 742a.

The opinion of the Supreme Court of Oklahoma purportedly attempts to distinguish between the Federal Home Loan Bank and a federally chartered savings and loan association on the basis that the Bank, unlike a federally chartered savings and loan association, is the only "federal instrumentality" exempt from state taxation under the federal statute. Furthermore, the Court concluded that a federally chartered savings

and loan association may not be classified as a federal instrumentality as that term is contemplated within the statute by either direct reference or by implication. Consequently, the Court found that the tax was not being imposed on the income of an exempt entity, but, rather, on the income of non-exempt savings and loan associations. (See Okla. Sup. Ct. opin. App. A, pp. 6-A-10-A.)

Appellants believe that the opinion of the Supreme Court of Oklahoma, summarized above, ignores the clear language of 31 U.S.C. §§742 and 742a. in favor of an opinion of the California Court of Appeals. (See Okla. Sup. Ct. opin. App. P. 7-A, citing to *First Federal Savings and Loan Association of Altadena v. Johnson, State Treasurer, et al,* 122 P.2d 84 (Cal. 3rd Dist. Ct. App. 1942).

Initially, Section 742, as amended by 742a., specifically exempts, *inter alia,* from all but federal taxation dividends from stock issued by the United States, or an instrumentality of the United States. In view of the citations outlined above, Appellants believe it is well established that the Federal Home Loan Bank would qualify as an instrumentality of the United States. Consequently, it logically follows that dividends paid to stockholders of the Federal Home Loan Bank would be exempt from all but federal taxation.

The fact that shares and other instruments of ownership are exempt from all but federal taxation taxation is most clearly illustrated by the legislative history of Section 742a. as contained in House Report, No. 1876, 77th Cong., 2d Session, 3/6/41, P. 1. In this passage, the committee states:

> 'The bill is designed . . . to subject all shares and other evidences of ownership issued in the future by any agency or instrumentality of the United States to *federal taxation* by removing all privileges of exemptions *from such taxation* which they now enjoy." (Emphasis supplied)

Consequently, the legislation was clearly federal in nature, and should not be interpreted to permit state or local taxation. [See *Piasa First Federal Savings and Loan Association v. U.S.*, 441 F.2d 399 (7th Cir. 1971).]

The failure by Congress to expressly end the exemption from state and local taxation mandates the retention of the exemption. [See *McCullough v. Maryland*, 17 U.S. 316, 4 L.Ed. 579 (1819).] In *Mayo v. United States*, 319 U.S. 441, 87 L.Ed. 1504 (1943), this Court held that where the governmental action is carried on by the United States itself, and Congress does not affirmatively declare its instrumentalities or property subject to regulation or taxation, the inherent freedom from taxation continues. Similarly, this Court earlier observed that Congress could waive a federal instrumentality's exemption from state taxation, "but the waiver must be clear, and every well-grounded doubt on the subject should be resolved in favor of the exemption." [See *Austin v. Aldermen of Boston*, 74 U.S. 694, 699, 19 L.Ed. 224, 226 (1869).] Indeed, the Supreme Court of Ohio, in *Dunn v. Board of Tax Appeals*, 154 Ohio 42, 93 N.E. 2d 278, 281 (Ohio 1950), recognized that although a state may tax instrumentalities of a national government if the latter consents thereto, such waiver or consent must be duly authorized and clearly given.

Finally, the holding of the Supreme Court of Oklahoma, characterizing the dividends received by Appellants as income to other than an exempt federal instrumentality, ignores the obvious fact that the dividends are derived directly from the net earnings of the Federal Home Loan Bank. (See 12 U.S.C. §1436) If the Bank had not realized net earnings, the dividends could not, by statute, have been paid to Appellants. Moreover, if this tax is permitted to be imposed, the cost of operating federally chartered savings and loan associations, such as Ap-

pellants, will undoubtedly increase; thereby raising the specter of increased borrowing costs to those seeking mortgage money in an already inflation ravaged market.

In conclusion, the decision of the Supreme Court of Oklahoma has not carefully considered the inherent limitations of 31 U.S.C. §§742 and 742a., and, therefore, the opinion requires reversal by this Court to prevent an abuse of federal law.

CONCLUSION

The decision of the Supreme Court of Oklahoma imposing a tax on the dividends received by Appellants from the Federal Home Loan Bank should be accorded plenary review by this Court. In addition, this Honorable Court should allow the parties to provide briefs on the merits and to present oral arguments to assist in the resolution of this matter.

Respectfully submitted,

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